

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application

Appellants:	ROY, et al.	Confirmation No.:	2478
Application No.:	10/698,810	Group Art Unit:	2155
Filed:	October 30, 2003	Examiner:	Tran, P.

For: Systems and Methods in Which a Provider is Selected to Service Content Requested  
by a Client Device

APPEAL BRIEF

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### I. Real Party in Interest

The assignee of the present application is Hewlett-Packard Development Company,  
L.P.

## II. Related Appeals and Interferences

There are no related appeals or interferences known to the Appellant.

### III. Status of Claims

Claims 1-41 are pending. Claims 1-41 are rejected. This Appeal involves Claims 1-41.

#### IV. Status of Amendments

All proposed amendments have been entered. An amendment subsequent to the Final Action has not been filed.

## V. Summary of Claimed Subject Matter

Independent Claims 1, 9, 13, 29, 33 and 38 of the present application pertain to systems and methods in which a provider is selected to service content requested by a client.

In Claim 1, “A method of servicing content for delivery to a client device” is described and shown at least in Figures 1, 2A-2B and 3. In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 30-35, 304 of Figure 3 identifies a type of service to be performed on an item of content (described at least at page 9 lines 18-35), wherein said item of content (described at least at page 9 lines 18-35) is identified during a session involving said client device 150.

In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 36-40, 306 of Figure 3 selects a provider 130 from a plurality of providers (e.g., 130 and 132) capable of performing said service. At least one embodiment of Figures 1, 2A-2B and Figure 3; and at least page 17 lines 8-10, 308 of Figure 3 provides information for transferring said session to said provider 130, wherein said provider 130 performs said service on said item of content (described at least at page 9 lines 18-35).

In Claim 9, “A method of servicing content for streaming to a client device” is described and shown at least in Figures 1, 2A-2B and 3. In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 30-35, 304 of Figure 3 identifies a type of service to be performed on an item of content (described at least at page 9 lines 18-35), wherein said item of content (described at least at page 9 lines 18-35) is identified during a session involving said client device 150. In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 36-40, 306 of Figure 3 selects a provider 130 from a plurality of providers (e.g., 130 and 132) capable of performing said service.

At least one embodiment of Figures 1, 2A-2B and Figure 3; and at least page 17 lines 8-10, 308 of Figure 3 provides information for transferring said session to said provider 130, wherein said provider 130 performs said service on said item of content (described at least at page 9 lines 18-35) and wherein at 316, and page 16 lines 12-16, service result data are streamed from said provider 130 to said client device 150.

In Claim 13, “A system for providing content to a client device” is described and shown at least in Figures 1 and 2A. In one embodiment, such as shown at Figures 1 and 2A; and at least page 10 lines 16-24, a service manager 120 for receiving a request (e.g., message 2 shown at least in Figures 1 and 2A and described at least at page 11 lines 13-26) for an item of content (described at least at page 9 lines 18-35) from a portal 140 (described at least at page 10 lines 12-14 and shown at least in Figures 1 and 2A), wherein said portal 140 received said request from said client device 150 (e.g., message 1 shown at least in Figures 1 and 2A and described at least at page 10 lines 30-40).

In one embodiment, as shown at least at page 10 lines 16-24, page 11 lines 31-40 and page 12 lines 1-20, and shown in Figures 1 and 2A, service manager 120 also for selecting a provider (e.g., 130) (described at least at page 10 lines 1-10) from a plurality of providers (e.g., 130 and 132), each provider capable of performing a service on said item of content (described at least at page 9 lines 18-35).

In one embodiment, as shown in Figures 1 and 2A and described at least at page 13 lines 6-12, a session with said client device 150 is redirected from said portal 140 to said provider 130 such that said session continues via said provider 130 (e.g., messages 3, 4 and 5 shown at least in Figures 1 and 2A and described at least at page 12 lines 26-35). In one embodiment, as shown in Figures 1 and 2A and described at least at page 14 lines 8-11, said provider 130 performs said service on said item of content (described at least at page 9 lines 18-35). In one embodiment, as shown in Figures 1 and 2A and described at least at page 14 lines 13-18, said provider 130 forwards service result content (e.g., message 8 shown at least in Figures 1 and 2A and described at least at page 10 lines 30-40) to said client device 150.

In Claim 29, “A system for streaming content to a client device” is described and shown at least in Figures 1 and 2A. In one embodiment, such as shown at Figures 1 and 2A; and at least page 10 lines 16-24, a service manager 120 for receiving a request (e.g., message 2 shown at least in Figures 1 and 2A and described at least at page 11 lines 13-26) for an item of content (described at least at page 9 lines 18-35) from a portal 140 (described at least at page 10 lines 12-14 and shown at least in Figures 1 and 2A), wherein said portal 140 received said request from said client device 150 (e.g., message 1 shown at least in Figures 1 and 2A and described at least at page 10 lines 30-40).



In one embodiment, as shown at least at page 10 lines 16-24, page 11 lines 31-40 and page 12 lines 1-20, and shown in Figures 1 and 2A, service manager 120 also for selecting a provider (e.g., 130) (described at least at page 10 lines 1-10) from a plurality of providers (e.g., 130 and 132), each provider capable of performing a service on said item of content (described at least at page 9 lines 18-35). In one embodiment, as shown in Figures 1 and 2A and described at least at page 13 lines 6-12, a session with said client device 150 is redirected from said portal to said provider 130 such that said session continues via said provider 130 (e.g., messages 3, 4 and 5 shown at least in Figures 1 and 2A and described at least at page 12 lines 26-35).

In one embodiment, as shown in Figures 1 and 2A and described at least at page 13 lines 33-36, data for said item of content (described at least at page 9 lines 18-35) are streamed from a content source 110 to said provider 130.

In one embodiment, as shown in Figures 1 and 2A and described at least at page 14 lines 8-11, said provider 130 performs said service on said item of content (described at least at page 9 lines 18-35). In one embodiment, as shown in Figures 1 and 2A and described at least at page 14 lines 13-18, said provider 130 streams service result content (e.g., message 8 shown at least in Figures 1 and 2A and described at least at page 10 lines 30-40) to said client device 150.

In Claim 33, “A computer-usable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for delivery to a client device” is described and shown at least in Figures 1, 2A-2B and 3. In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 30-35, 304 of Figure 3 identifies a type of service to be performed on an item of content (described at least at page 9 lines 18-35), wherein said item of content (described at least at page 9 lines 18-35) is identified during a session involving said client device 150.

In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 36-40, 306 of Figure 3 selects a provider 130 from a plurality of providers (e.g., 130 and 132) capable of performing said service. At least one embodiment of Figures 1, 2A-

2B and Figure 3; and at least page 17 lines 8-10, 308 of Figure 3 provides information for transferring said session to said provider 130, wherein said provider 130 performs said service on said item of content (described at least at page 9 lines 18-35).

In Claim 38, “A computer-usable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for streaming to a client device” is described and shown at least in Figures 1, 2A-2B and 3. In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 30-35, 304 of Figure 3 identifies a type of service to be performed on an item of content (described at least at page 9 lines 18-35), wherein said item of content (described at least at page 9 lines 18-35) is identified during a session involving said client device 150.

In one embodiment, such as shown at Figures 1, 2A-2B and Figure 3; and at least page 16 lines 36-40, 306 of Figure 3 selects a provider 130 from a plurality of providers (e.g., 130 and 132) capable of performing said service. At least one embodiment of Figures 1, 2A-2B and Figure 3; and at least page 17 lines 8-10, 308 of Figure 3 provides information for transferring said session to said provider 130, wherein said provider 130 performs said service on said item of content (described at least at page 9 lines 18-35) and wherein at 316, and page 16 lines 12-16, service result data are streamed from said provider 130 to said client device 150.

## VI. Grounds of Rejection to Be Reviewed on Appeal

1. Claims 1-7 and 33-36 stand rejected under 35 U.S.C. 102(e) as being anticipated by Menditto et al. (6,981,029), hereinafter referred to as Menditto.

2. Claims 13-32 stand rejected under 35 U.S.C. 102(e) as being anticipated by Janik et al. (2002/0013852), hereinafter referred to as Janik.

3. Claims 8-12 and 37-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Menditto in view of Janik.

## VII. Argument

### 1. Whether Claims 1-7 and 33-36 are anticipated under 35 U.S.C. § 102(e) over Menditto.

Appellants have reviewed the above cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 1-7 and 33-36 are not anticipated by Menditto for at least the following rationale.

Appellants respectfully submit that independent Claim 1 (and similarly Independent Claim 33) includes the features: “identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device”; and “selecting a provider from a plurality of providers capable of performing said service.”

#### **MPEP §2131 provides:**

**“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”** *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... **“The identical invention must be shown in as complete detail as is contained in the ... claim.”** *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). **The elements must be arranged as required by the claim.**

Appellants have reviewed Menditto and do not understand Menditto to anticipate identifying a type of service to be performed on an item of content and selecting a provider from a plurality of providers capable of performing the service.

In contrast, Appellants respectfully submit that Menditto teaches a system and method for processing a request for information in a network. As such, Appellants respectfully submit that Menditto anticipates managing routing content requests to increase network efficiency. Moreover, Appellants understand Menditto to anticipate providing a higher quality of service utilizing a subscription service, the higher quality of service including rules related to bandwidth allowances and limited queue and drop policies.

Thus, Appellants understand Menditto to anticipate quality of service adjustments, which are distinctly different than identifying a service to be performed on an item of content, or selecting a provider capable of performing the service on the item of content.

For this reason, Appellants respectfully submit that Menditto does not anticipate the features: “identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device”; and “selecting a provider from a plurality of providers capable of performing said service” as recited in independent Claims 1 and 33 (emphasis added).

Therefore, since Menditto fails to anticipate each and every element as recited in independent Claims 1 and 33, Appellants respectfully submit that Independent Claims 1 and 33 overcome the rejections under 35 U.S.C. §102(e), and, as such, respectfully request reversal of the present rejections.

Furthermore, Appellants respectfully submit that independent Claim 1 (and similarly Independent Claim 33) includes the feature: “providing information for transferring said session to said provider, wherein said provider performs said service on said item of content.”

Appellants have reviewed Menditto and do not understand Menditto to anticipate the provider performing the service on the item of content.

In contrast, as stated herein, Appellants respectfully submit that Menditto teaches a system and method for processing a request for information in a network. As such, Appellants respectfully submit that Menditto anticipates managing routing content requests to increase network efficiency. Moreover, Appellants understand Menditto to anticipate providing a higher quality of service utilizing a subscription service, the higher quality of service including rules related to bandwidth allowances and limited queue and drop policies.

Thus, Appellants understand Menditto to anticipate quality of service adjustments, which are distinctly different than the provider performing the service on the item of content.

For this reason, Appellants respectfully submit that Menditto does not anticipate the additional feature: “providing information for transferring said session to said provider, wherein said provider performs said service on said item of content” as recited in independent Claims 1 and 33 (emphasis added).

Therefore, since Menditto fails to anticipate each and every element as recited in independent Claims 1 and 33, Appellants respectfully submit that Independent Claims 1 and 33 overcome the rejections under 35 U.S.C. §102(e), and, as such, respectfully request reversal of the present rejections.

With respect to Claims 2-7 and 34-36, Appellants respectfully point out that Claims 2-7 and 34-36 depend from allowable independent Claims 1 and 33 and recite further embodiments of the present claimed invention. Therefore, Appellants respectfully submit that Claims 2-7 and 34-36 overcome the rejections under 35 U.S.C. §102(e), and that these claims are thus in a condition for allowance as being dependent on allowable base claims. Thus, Appellants respectfully request that the rejection of Claims 1-7 and 33-36 be overturned.

Response to Arguments on Page 13 of the Final Office Action Mailed November 28, 2007

With respect to page 13, item 7 paragraph 3, Appellants respectfully disagree with the Final OA statement, “Menditto teaches a method of servicing content for delivery to a client device such as processing the request from a client and providing the requested content to the client [see Abstract] comprising identifying a type of service to be performed on an item of content” (emphasis added).

MPEP 2173.05(a) provides, “The meaning of every term used in a claim should be apparent from the prior art or from the specification and drawings at the time the application is filed. Applicants need not confine themselves to the terminology used in the prior art, but are required to make clear and precise the terms that are used to define the invention whereby the metes and bounds of the claimed invention can be ascertained. During patent examination, the pending claims must be given the broadest reasonable interpretation consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027

(Fed. Cir. 1997); *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969). See also **MPEP § 2111 - § 2111.01**. When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989).”

Specifically, Appellants respectfully submit that the Claimed “item of content” is clearly described including at least at page 9 lines 18-35 of the Specification. As such, Appellants respectfully submit that as provided, when the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art” (emphasis added).

Therefore, since Menditto fails to anticipate each and every element as recited in independent Claims 1 and 33, Appellants respectfully submit that Independent Claims 1 and 33 overcome the rejections under 35 U.S.C. §102(e), and, as such, respectfully request reversal of the present rejections.

In addition, with respect to page 13, item 7 paragraph 3, Appellants respectfully agree and also understand Menditto to teach a system and method for processing a request for information in a network. As such, Appellants further respectfully agree and understand Menditto to anticipate managing routing content requests to increase network efficiency probably including “locating the best server and network connection for delivering data to the client terminal (Final OA 11.28.07 page 13 lines 17-20). Moreover, Appellants respectfully understand Menditto to anticipate providing a higher quality of service utilizing a subscription service, the higher quality of service including rules related to bandwidth allowances and limited queue and drop policies.

However, while Appellants understand Menditto to anticipate quality of service identifications and adjustments for traffic in a network environment; Appellants respectfully submit the quality of service identifications and adjustments are distinctly different than identifying a service to be performed on an item of content, or selecting a provider capable of performing the service on the item of content (emphasis added).

For example, as stated at page 13 lines 17-20 Final OA 11.28.07, Menditto is understood to teach “locating the best server and network connection for delivering data to the client terminal” (emphasis added). As such, Menditto does not anticipate, “selecting a provider from a plurality of providers capable of performing the service” on the item of content as each server and network connection of Menditto would (presumably) be capable of delivering data to the client terminal (emphasis added).

For this additional reason, since Menditto fails to anticipate each and every element as recited in independent Claims 1 and 33, Appellants respectfully submit that Independent Claims 1 and 33 overcome the rejections under 35 U.S.C. §102(e), and, as such, respectfully request reversal of the present rejections.



2. Whether Claims 13-32 are anticipated under 35 U.S.C. § 102(e) over Janik.

Appellants have reviewed the above cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 13-32 are not anticipated by Janik for at least the following rationale.

Appellants respectfully submit that independent Claim 13 (and similarly Independent Claim 29) includes the features: “a service manager for receiving a request for an item of content from a portal, wherein said portal received said request from said client device, said service manager also for selecting a provider from a plurality of providers, each provider capable of performing a service on said item of content, wherein a session with said client device is redirected from said portal to said provider such that said session continues via said provider...”

**As previously stated herein, MPEP §2131 provides:**

**“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”** *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... **“The identical invention must be shown in as complete detail as is contained in the ... claim.”** *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). **The elements must be arranged as required by the claim.**

Appellants have reviewed Janik and do not understand Janik to anticipate a service manager for receiving a request for an item of content from a portal, wherein the portal received the request from the client device, the service manager also for selecting a provider from a plurality of providers, each provider capable of performing a service on the item of content, wherein a session with the client device is redirected from the portal to the provider such that the session continues via the provider.

In contrast, Appellants respectfully submit that Janik teaches a system for providing content, management, and interactivity for thin client devices. As such, Appellants understand Janik to anticipate managing thin client devices via a user interface such as a personal computer.

Thus, Appellants understand Janik to anticipate management of thin client devices from a single client device, which are distinctly different.

For this reason, Appellants respectfully submit that Janik does not anticipate the features: “a service manager for receiving a request for an item of content from a portal, wherein said portal received said request from said client device, said service manager also for selecting a provider from a plurality of providers, each provider capable of performing a service on said item of content, wherein a session with said client device is redirected from said portal to said provider such that said session continues via said provider” as recited in independent Claims 13 and 29 (emphasis added).

Therefore, since Janik fails to anticipate each and every element as recited in independent Claims 13 and 29, Appellants respectfully submit that Independent Claims 13 and 29 overcome the rejections under 35 U.S.C. §102(e), and, as such, respectfully request reversal of the present rejections.

With respect to Claims 14-28 and 30-32, Appellants respectfully point out that Claims 14-28 and 30-32 depend from allowable independent Claims 13 and 29 and recite further embodiments of the present claimed invention. Therefore, Appellants respectfully submit that Claims 13-32 overcome the rejections under 35 U.S.C. §102(e), and as such, respectfully request the rejection of Claims 13-32 be overturned.

Response to Arguments on Page 14 of the Final Office Action Mailed November 28, 2007

With respect to item 7 page 14 paragraph 2, Appellants respectfully disagree with the Final OA statement, “Janik to anticipate a service manager for receiving a request for an item of content from a portal, for delivery to a client device such as processing the request from a client and providing the requested content to the client [see Abstract] comprising identifying a type of service to be performed on an item of content” (emphasis added).

MPEP 2173.05(a) provides, “The meaning of every term used in a claim should be apparent from the prior art or from the specification and drawings at the time the application is filed. Applicants need not confine themselves to the terminology used in the prior art, but

are required to make clear and precise the terms that are used to define the invention whereby the metes and bounds of the claimed invention can be ascertained. During patent examination, the pending claims must be given the broadest reasonable interpretation consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969). See also **MPEP § 2111 - § 2111.01**. When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989).”

Specifically, Appellants respectfully submit that the Claimed “item of content” is clearly described including at least at page 9 lines 18-35 of the Specification. As such, Appellants respectfully submit that as provided, when the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art” (emphasis added).

Therefore, since Janik fails to anticipate each and every element as recited in independent Claims 13 and 29, Appellants respectfully submit that Independent Claims 13 and 29 overcome the rejections under 35 U.S.C. §102(e), and, as such, respectfully request reversal of the present rejections.

In addition, with respect to item 7 page 14 paragraph 4, Appellants respectfully agree and also understand Janik to teach a system for providing content, management, and interactivity for thin client devices.

However, while Appellants understand Janik to teach a system for providing content, management, and interactivity for thin client devices; Appellants respectfully submit the content, management, and interactivity for thin client devices are distinctly different than a “service manager for **receiving a request** for an item of content from a **portal**, wherein said **portal received said request from said client device**, said service manager also for selecting a provider from a plurality of providers, each provider **capable of performing a service** on said item of content, wherein a session with said client device is redirected from

said portal to said provider such that said session continues via said provider, and wherein said **provider performs said service on said item of content** and **forwards service result content** to said client device” (emphasis added).

For example, as stated at page 14 lines 17-20 Final OA 11.28.07, Janik is understood to teach “a web portal (i.e., service manager) for accessing and selecting content is used in conjunction with graphic user interfaces on a PC for setting up and controlling the content channels wherein Internet and digital content is delivering from the server to clients [see Janik, Abstract and Figs. 1-2 & 23 and Paragraphs 0074-0109]” (emphasis added).

As such, Janik cannot possibly anticipate, “wherein a session with said client device is redirected from said portal to said provider such that said session continues via said provider, and wherein said **provider performs said service on said item of content** and **forwards service result content** to said client device” as the web portal (i.e., service manager) of Janik sets up and controls the content channels delivering content from the server to the clients (emphasis added). Thus, Appellants understand no anticipation or teaching of Janik, and in fact, Appellants understand Janik to teach directly away from the feature, “wherein a session with said client device is redirected from said portal to said provider such that said session continues via said provider, and wherein said provider performs said service on said item of content and forwards service result content to said client device” (emphasis added).

For this additional reason, since Janik fails to anticipate each and every element as recited in independent Claims 13 and 29, Appellants respectfully submit that Independent Claims 13 and 29 overcome the rejections under 35 U.S.C. §102(e), and, as such, respectfully request reversal of the present rejections.

3. Claims 8-12 and 37-41 are unpatentable under 35 U.S.C. 103(a) over Menditto in view of Janik.

Appellants have reviewed the above cited references and respectfully submit that the embodiments of the present invention as recited in Claims 8-12 and 37-41 are patentable over Menditto, either taken alone or in combination with Janik.

Appellants respectfully point out that Claim 8 depends from allowable Independent Claim 1 and that Claim 37 depends from allowable Claim 32 and that Claims 8 and 37 recite further features of the present claimed invention. Therefore, Appellants respectfully submit that Claims 8 and 37 overcome the rejection under 35 U.S.C. §103(a), and as such, are in a condition for allowance as being dependent on allowable base claims.

Regarding Claims 9 and 38, Appellants respectfully submit that independent Claim 9 (similar to Independent Claim 38) includes the feature: “identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device; selecting a provider from a plurality of providers capable of performing said service; and providing information for transferring said session to said provider, wherein data for said item of content are streamed from a content source to said provider, wherein said provider performs said service on said item of content and wherein service result data are streamed from said provider to said client device.”

PRIMA FACIE CASE OF OBVIOUSNESS NOT MET BECAUSE CITED COMBINATION CHANGES PRINCIPLE OF OPERATION OF PRIOR ART BEING MODIFIED

According to MPEP 2143.01(VI), “[i]f the proposed modification or combination of the prior art would change the principle of operation of the invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)” (emphasis added).

As previously provided herein and incorporated in its entirety, Appellants have reviewed Menditto and do not understand Menditto to teach or render obvious identifying a type of service to be performed on an item of content and selecting a provider from a plurality of providers capable of performing the service.

In contrast, Appellants respectfully submit that Menditto teaches a system and method for processing a request for information in a network. As such, Appellants respectfully submit that Menditto teach or render obvious managing routing content requests to increase network efficiency. Thus, Appellants understand Menditto to teach or render obvious quality of service adjustments, which are distinctly different than identifying a service to be performed on an item of content, or selecting a provider capable of performing the service on the item of content.

For this reason, and the reasons previously provided herein and incorporated in their entirety, Appellants respectfully submit that Menditto does not teach or render obvious the features: “identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device”; and “selecting a provider from a plurality of providers capable of performing said service” as recited in independent Claims 9 and 38 (emphasis added).

Furthermore, as stated herein, Appellants respectfully submit that independent Claim 1 (and similarly Independent Claim 33) includes the feature: “providing information for transferring said session to said provider, wherein said provider performs said service on said item of content.”

*PRIMA FACIE* CASE OF OBVIOUSNESS Not met because cited combination renders the prior art unsatisfactory for its intended purpose.

According to MPEP 2143.01(V), “[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification,” (emphasis added) In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Appellants have reviewed Menditto and do not understand Menditto to teach or render obvious the provider performing the service on the item of content. In contrast, as stated herein, Appellants respectfully submit that Menditto teaches a system and method for processing a request for information in a network. As such, Appellants respectfully submit

that Menditto teach or render obvious managing routing content requests to increase network efficiency. Moreover, Appellants understand Menditto to teach or render obvious providing a higher quality of service utilizing a subscription service, the higher quality of service including rules related to bandwidth allowances and limited queue and drop policies.

Thus, Appellants understand Menditto to teach or render obvious quality of service adjustments, which are distinctly different than the provider performing the service on the item of content.

For this reason, and the reasons previously provided herein and incorporated in their entirety, Appellants respectfully submit that Menditto does not teach or render obvious the additional feature: “providing information for transferring said session to said provider, wherein said provider performs said service on said item of content” as recited in independent Claims 9 and 38 (emphasis added).

With respect to Janik, Appellants have reviewed Janik and do not understand Janik to teach or render obvious a service manager for receiving a request for an item of content from a portal, wherein the portal received the request from the client device, the service manager also for selecting a provider from a plurality of providers, each provider capable of performing a service on the item of content, wherein a session with the client device is redirected from the portal to the provider such that the session continues via the provider.

In contrast, Appellants respectfully submit that Janik teaches a system for providing content, management, and interactivity for thin client devices. As such, Appellants understand Janik to teach or render obvious managing thin client devices via a user interface such as a personal computer.

Thus, Appellants understand Janik to teach or render obvious management of thin client devices from a single client device, which are distinctly different.

For this reason, and the reasons previously provided herein and incorporated in their entirety, Appellants respectfully submit that Janik does not teach or render obvious the features: “a service manager for receiving a request for an item of content from a portal,

wherein said portal received said request from said client device, said service manager also for selecting a provider from a plurality of providers, each provider capable of performing a service on said item of content, wherein a session with said client device is redirected from said portal to said provider such that said session continues via said provider” as recited in independent Claims 9 and 38 (emphasis added).

As such, Appellants respectfully submit that neither Menditto alone nor in combination with Janik teaches or renders obvious the features of Claims 9 and 38. As such, Appellants respectfully submit that Claims 9 and 38 overcome the rejection under 35 U.S.C. §103(a).

Moreover, it must be remembered that “*If the proposed **modification or combination** of the prior art **would change the principle of operation** of the prior art invention being modified, then **the teachings** of the reference **are not sufficient** to render the claims prima facie obvious.*” *In re Ratti* 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (comment added).

For the reasons previously provided herein and incorporated in their entirety, Appellants do not understand Menditto to teach or render obvious identifying a type of service to be performed on an item of content; selecting a provider from a plurality of providers capable of performing the service; and the provider performing the service on the item of content as recited in independent Claims 9 and 38. As such, the modification of Menditto, to identifying and performing a service on an item of content; would change the method of operation of Menditto. In other words, Appellants understand Menditto to teach *directly away* from the claimed features.

Regarding Claims 10-12 and 39-41, in addition to being dependent upon Independent Claims 9 and 38 that have been demonstrated to be allowable over Menditto, Appellants respectfully assert that dependent Claims 10-12 and 39-41 provide additional patentably distinct elements that are not obvious in light of Menditto and Janik (whether taken separately or in combination). Thus, Appellants respectfully submit that Claims 10-12 and 39-41 overcome the rejection under 35 U.S.C. §103(a). As such, Appellants respectfully request that the rejection of Claims 8-12 and 37-41 be overturned.



### Conclusion

Appellants believe that pending Claims 1-41 are directed toward patentable subject matter. As such, Appellants respectfully request that the rejection of Claims 1-41 be reversed.

Appellants wish to encourage the Examiner or a member of the Board of Patent Appeals to telephone the Appellants' undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,

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### VIII. Appendix - Clean Copy of Claims on Appeal

1. A method of servicing content for delivery to a client device, said method comprising:
  - identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;
  - selecting a provider from a plurality of providers capable of performing said service;
  - and
  - providing information for transferring said session to said provider, wherein said provider performs said service on said item of content.
2. The method of Claim 1 wherein said selecting comprises:
  - maintaining a record of providers to which sessions have been transferred; and
  - selecting said provider according to said record.
3. The method of Claim 2 further comprising:
  - estimating an amount of time said session is expected to remain with said provider, wherein said record is updated once said amount of time has passed.
4. The method of Claim 2 further comprising:
  - receiving an indication from said provider that said service is completed, wherein said record is updated in response to said indication.
5. The method of Claim 1 wherein said provider is selected according to a round-robin scheme.
6. The method of Claim 1 wherein said provider is selected at random.
7. The method of Claim 1 wherein said transferring comprises:
  - sending information for locating said provider to said client device, wherein said client device and said provider transparently establish communication.
8. The method of Claim 1 further comprising:
  - identifying a source of said item of content, wherein data for said item of content are streamed from said source to said provider and wherein service result data are streamed from said provider to said client device.

9. A method of servicing content for streaming to a client device, said method comprising:  
identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;  
selecting a provider from a plurality of providers capable of performing said service;  
and  
providing information for transferring said session to said provider, wherein data for said item of content are streamed from a content source to said provider, wherein said provider performs said service on said item of content and wherein service result data are streamed from said provider to said client device.

10. The method of Claim 9 wherein said selecting comprises:  
maintaining a record of providers to which sessions have been transferred; and  
selecting said provider according to said record.

11. The method of Claim 9 wherein said provider is selected according to a round-robin scheme.

12. The method of Claim 9 wherein said provider is selected at random.

13. A system for providing content to a client device, said system comprising:  
a service manager for receiving a request for an item of content from a portal, wherein said portal received said request from said client device, said service manager also for selecting a provider from a plurality of providers, each provider capable of performing a service on said item of content, wherein a session with said client device is redirected from said portal to said provider such that said session continues via said provider, and wherein said provider performs said service on said item of content and forwards service result content to said client device.

14. The system of Claim 13 wherein said service manager maintains a history of providers engaged in sessions, wherein said provider is selected according to said history.

15. The system of Claim 13 wherein said service manager identifies an amount of time said session is estimated to remain with said provider, wherein said history is updated in response to said amount of time transpiring.

16. The system of Claim 13 wherein said service manager receives an indication that said service has been performed, wherein said history is updated in response.

17. The system of Claim 13 wherein said provider is selected according to a round-robin scheme.

18. The system of Claim 13 wherein said provider is selected at random.

19. The system of Claim 13 wherein said service manager sends information identifying said provider to said client device via said portal.

20. The system of Claim 13 wherein said service manager sends information identifying said provider directly to said client device, bypassing said portal.

21. The system of Claim 13 wherein a source of said item of content is identified according to information provided in said request from said client device.

22. The system of Claim 13 wherein a source of said item of content is identified by one of said portal, said service manager and said provider.

23. The system of Claim 13 wherein said item of content is streamed from a content source to said provider.

24. The system of Claim 13 wherein said type of service is identified according to information provided in said request received from said client device.

25. The system of Claim 13 wherein said type of service is identified by one of said portal and said service manager.

26. The system of Claim 13 wherein said service is continuously available from said provider.

27. The system of Claim 13 wherein said service is started up and executed in response to said client device establishing communication with said provider.

28. The system of Claim 13 wherein said service manager directs said provider to start up said service upon selection of said provider.

29. A system for streaming content to a client device, said system comprising:

a service manager for receiving a request for an item of content from a portal, wherein said portal received said request from said client device, said service manager also for selecting a provider from a plurality of providers, each provider capable of performing a service on said item of content, wherein a session with said client device is redirected from said portal to said provider such that said session continues via said provider, wherein data for said item of content are streamed from a content source to said provider, and wherein said provider performs said service on said item of content and streams service result content to said client device.

30. The system of Claim 29 wherein said service manager maintains a history of providers engaged in sessions, wherein said provider is selected according to said history.

31. The system of Claim 29 wherein said service manager identifies an amount of time said session is estimated to remain with said provider, wherein said history is updated in response to said amount of time transpiring.

32. The system of Claim 29 wherein said service manager receives an indication that said service has been performed, wherein said history is updated in response.

34. The computer-usable medium of Claim 33 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

maintaining a record of providers to which sessions have been transferred; and  
selecting said provider according to said record.

35. The computer-usable medium of Claim 33 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

estimating an amount of time said session is expected to remain with said provider, wherein said record is updated once said amount of time has passed.

36. The computer-usable medium of Claim 33 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

receiving an indication from said provider that said service is completed, wherein said record is updated in response to said indication.

37. The computer-usable medium of Claim 33 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

identifying a source of said item of content, wherein data for said item of content are streamed from said source to said provider and wherein service result data are streamed from said provider to said client device.

38. A computer-usable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for streaming to a client device, said method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;

selecting a provider from a plurality of providers capable of performing said service; and

providing information for transferring said session to said provider, wherein data for said item of content are streamed from a content source to said provider, wherein said provider performs said service on said item of content and wherein service result data are streamed from said provider to said client device.

39. The computer-usable medium of Claim 38 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

maintaining a record of providers to which sessions have been transferred; and selecting said provider according to said record.

40. The computer-usable medium of Claim 38 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

estimating an amount of time said session is expected to remain with said provider, wherein said record is updated once said amount of time has passed.

41. The computer-usable medium of Claim 38 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

receiving an indication from said provider that said service is completed, wherein said record is updated in response to said indication.

## IX. Evidence Appendix

No evidence is herein appended.

## X. Related Proceedings Appendix

No related proceedings.